IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

ESTATE OF LOUIS STANLEY LEYSATH, III, ***et al.***	*	
Plaintiffs,	*	**Case No.: GJH-17-1362**
v.	*	
STATE OF MARYLAND, ***et al.***	*	
Defendants.	*	

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MEMORANDUM OPINION

Louis Stanley Leysath, III ("Leysath") was incarcerated at the Jessup Correctional Institution ("JCI") in Jessup, Maryland when, on February 20, 2015, he died from thermal injuries after breaking an exposed radiator steam pipe in his cell. Leysath's wife, Morgan Leysath, father, Louis Leysath, Jr., and mother, Cheryl Leysath, individually and on behalf of Leysath's estate, (collectively, "Plaintiffs") bring claims under Maryland tort law and the U.S. Constitution against the State of Maryland, Stephen T. Moyer, Secretary of Public Safety for the Maryland Department of Public Safety and Correctional Services, Officer Marcel Jaff, Officer Betty Knox, Sergeant Gerald Coleman, Sergeant Foluso Fekoya, Lieutenant Boenhflahn Herring, Lieutenant Gena Addison, Major James Harris, Captain Odette Henry- McCarthy, (collectively, "the Correctional Officers"), Dr. Lynda Bonieskie, and Dr. Jacqueline Moore (collectively, "Defendants").[1] ECF No. 1. Presently pending before the Court is Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. ECF No. 30. No hearing is

[1] Plaintiffs' Complaint also named Dr. Syed Rizvi as a defendant but Plaintiffs have filed a notice of voluntary dismissal as to Rizvi. ECF No. 31. Rizvi's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, ECF No. 26, is therefore denied as moot.

necessary. Loc. R. 105.6 (D. Md. 2016). For the following reasons, Defendants' Motion is granted.

I. BACKGROUND

The facts of this case, as alleged by Plaintiffs and set forth in Defendants' Motion, are not in dispute. On the morning of February 19, 2015, a JCI officer observed that Leysath was exhibiting odd behavior and brought him to Dr. Moore for evaluation. ECF No. 30-4 ¶ 3. Dr. Moore evaluated Leysath for 20-30 minutes, during which Leysath stated that he "saw spirits." *Id.* ¶ 6. This was the first time Dr. Moore had evaluated Leysath, but mental health records indicated that Leysath had a prior history of mood swings and hearing voices, and that he had been prescribed psychotropic medications in 2011; however, the medications were discontinued in November 2012 after "he was deemed clinically stable despite medication noncompliance." *Id.* ¶ 4. Given Leysath's exhibited behavior, as a precaution, Dr. Moore recommended that he be placed on close observation due to "possible delirium." *Id.* ¶ 7. Dr. Moore also immediately referred Leysath for both a psychiatric and medical evaluation. *Id.* ¶ 7; ECF No. 30-5. Dr. Moore's supervisor, Dr. Bonieskie, Deputy Director of Mental Health Services, was aware of, and concurred with, Dr. Moore's approach. ECF No. 30-6.

Per Dr. Moore's direction, Leysath was placed on close observation in an observation cell, containing only a metal sink, toilet, sprinkler head, and wall radiator. ECF No. 30-6 ¶ 5. Observation cells do not contain a bed, bedding, or electrical outlets, and the inmate must wear a specially designed smock designed to prevent self-injury. *Id.* Close observation is intended for inmates exhibiting suicidal inclinations or odd behavior as a result of changes in mental status. ECF No. 30-4 ¶ 7. While under close observation, an inmate is monitored by correctional officers as well as inmate observation aides positioned outside of an inmate's cell. *See* ECF No. 30-6 ¶ 6; ECF No. 30-7.

At approximately 6:50 p.m. on February 19, inmate Luis Aguillar, Leysath's assigned observation aide, informed Officer Knox that Leysath was agitated and had broken the metal cover off of the wall radiator in his cell. ECF No. 30-9. The metal cover spans several feet in length and is secured to the radiator to cover the radiator steam pipes that run horizontally near the floor and provide heat to the cell. ECF Nos. 30-8; 30-11. Officer Knox informed Sergeant Coleman that the cover was detached, and Coleman then responded to Leysath's cell and notified his shift supervisor, Lieutenant Herring, of the situation. ECF No. 30-8 ¶ 6. Lieutenant Herring in turn notified Captain McCarthy, who deemed the detached radiator cover to be a hazard and instructed Lieutenant Herring to remove it prior to returning Leysath to the cell. ECF No. 30-12 ¶ 4. Captain McCarthy then informed the shift commander, Major Harris, who agreed with the response. ECF No. 30-13 ¶ 4.

Leysath was temporarily removed from his cell while Sergeant Coleman, with Lieutenant Herring and Lieutenant Addison present, removed the detached radiator cover. Leysath was then returned to his cell, and because the radiator cover had been removed, the radiator's steam pipes were exposed. ECF No. 30-8 ¶ 7. While these correctional officers maintain that Leysath was calm throughout this process, Trian Brown, the assigned inmate observation aide that evening, noted that Leysath banged on the door and talked to himself, saying that "they were doing something to his wife downstairs." ECF No. 30-16.

At approximately 3:20 a.m. the following morning, Leysath became agitated, claimed that he was going to kill someone for killing his wife, and flooded his cell. ECF No. 30-10. Officer Jaff notified Sergeant Fekoya, who observed that Leysath had removed his smock and appeared to be clogging the sink with it. ECF No. 30-17 ¶ 4. Although Leysath's cell was flooding, the water was not hot, and Sergeant Fekoya did not consider the flooding to be an emergency warranting Leysath's removal from the cell. *Id.* ¶¶ 4, 6 (noting that because Leysath was on close observation, Fekoya could not remove him from the cell unless there was an emergency or upon approval from his supervisors). Sergeant Fekoya noted that Leysath was "laughing and running around in the cell naked" but moved to a different cell while Officer Jaff and Brown remained nearby. ECF No. 30-17 ¶ 7.

At approximately 4:00 a.m., Sergeant Fekoya heard a loud sound from Leysath's cell and an inmate saying "Oh, we think he has bust the steam. He has bust the steam." *Id.* ¶ 8. Sergeant Fekoya observed steam through the window into Leysath's cell and made three separate radio transmissions to his supervisors. *Id* ¶ 9–10. At some point, Sergeant Fekoya opened the feed slot in the cell door and observed Leysath lying on the ground, unresponsive. *Id.* ¶ 11. At approximately 4:12 a.m., prior to the arrival of his supervisors, Sergeant Fekoya deemed the situation to be a medical emergency and, with the assistance of Officer Jaff, removed Leysath from his cell. *Id.* ¶ 12. Shortly thereafter a nurse arrived to administer CPR, but Leysath was pronounced dead at 4:58 a.m. due to thermal injuries sustained from the detached steam pipes. *Id.*; ECF No. 30-19 (Autopsy Report).

Plaintiffs filed suit in this Court on May 18, 2017, asserting the following claims against the State of Maryland, Secretary Moyer in his official capacity, and the remaining Defendants in their individual and official capacities: Negligence against Moore and Bonieskie (Count I); Negligence against the Correctional Officers (Count II); Negligence against the State (Count III); Wrongful Death (Count IV); Survival Action (Count V); Violation of Leysath's Civil Rights by

Moore and Bonieskie (Count VI); Violation of Leysath's Civil Rights by the Correctional Officers (Count VII). ECF No. 1.[2]

II. STANDARD OF REVIEW

Defendants move to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alterative, for summary judgment pursuant to Rule 56. ECF No. 30. Pursuant to Rule 12(b)(6), a court may dismiss a complaint for failure to state a claim upon which relief can be granted. When deciding a motion to dismiss, a court "must accept as true all of the factual allegations contained in the complaint," and "draw all reasonable inferences [from those facts] in favor of the plaintiff." *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citations and internal quotation marks omitted). Pursuant to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss invoking Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544. 570 (2007)).

Defendants' motion is styled as a motion to dismiss, or in the alternative, for summary judgment. A court considers only the pleadings when deciding a Rule 12(b)(6) motion. Where the parties present matters outside of the pleadings, and the Court considers those matters, the court will treat the motion as one for summary judgment. See *Gadsby v. Grasmick*, 109 F.3d 940, 949 (4th Cir. 1997); *Mansfield v. Kerry*, No. DKC-15-3693, 2016 WL 7383873, at *2 (D. Md. Dec. 21, 2016). All parties must be given some indication by the Court that it is treating a motion to dismiss as one for summary judgment, "with the consequent right in the opposing

[2] Plaintiffs' counts are incorrectly numbered in the Complaint, so the Court will refer to the counts based on the order in which they appear. ECF No. 1.

party to file counter affidavits or pursue reasonable discovery." *Gay v. Wall*, 761 F.2d 175, 177 (4th Cir. 1985).

When the moving party styles its motion as a "Motion to Dismiss or, in the Alternative, for Summary Judgment," as in the case here, and attaches additional materials to its Motion, the non-moving party is, of course, aware that materials outside the pleadings are before the Court, and the Court can treat the motion as one for summary judgment. *See Laughlin v. Metropolitan Wash. Airports Auth.*, 149 F.3d 253, 260–61 (4th Cir. 1998). A court may grant a motion for summary judgment only if there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A material fact is one that constitutes an element that is essential to a party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("the substantive law will identify which facts are material").

A genuine issue as to a material fact exists if the evidence that the parties present to the court is sufficient to indicate the existence of a factual dispute that could be resolved in the non-moving party's favor through trial. *See Anderson*, 477 U.S. at 248–49. While it is the movant's burden to show the absence of a genuine issue of material fact, *Pulliam Inv. Co., Inc. v. Cameo Properties*, 810 F.2d 1282, 1286 (4th Cir.1987), it is the non-moving party's burden to establish its existence, *see Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–87 (1986), and "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255.

III. DISCUSSION

A. Sovereign Immunity

Plaintiffs' claims against the State, and State employees acting in their official capacity, are barred by the Eleventh Amendment of the U.S. Constitution. Under the Eleventh Amendment, a State, including its agencies and departments, is immune from suit brought by its citizens or the citizens of another state in Federal court without the State's consent. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). The Fourth Circuit has recognized three exceptions to the Eleventh Amendment:

> First, Congress may abrogate the States' Eleventh Amendment immunity when it both unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority. *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001). . . . Second, the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law. *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004). . . . Third, a State remains free to waive its Eleventh Amendment immunity from suit in a federal court. *Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 618 (2002).

See Hyde v. Maryland State Board of Dental Examiners, No. 1:16-cv-02489-ELH, 2017 WL 2908998, at *6 (D. Md. July 7, 2017) (citing *Lee-Thomas v. Prince George's Cnty. Pub. Sch.*, 666 F.3d 244, 249 (4th Cir. 2012)).

None of these exceptions are applicable herein. First, Plaintiffs' civil rights claims in Counts VI and VII are brought as violations of the Eighth Amendment under 42 U.S.C. § 1983. *See* 42 U.S.C. § 1983 (creating civil liability for "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights . . . secured by the Constitution"). Congress has not abrogated Eleventh Amendment immunity for such claims. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 68 (1989) (by use of the term "person" in Section 1983, Congress did not intend to override State immunity). Second, Plaintiffs seek damages, not prospective injunctive relief. Third, Maryland has not waived its sovereign immunity for the tort claims alleged in Counts I-V. Under the Maryland Tort Claims Act ("MTCA"), Maryland's waiver of sovereign immunity is limited to suits in "a court of the State." *See* Md. Code State Gov't § 12-104(a); *see also* § 12-103(2) ("This subtitle does not . . . waive any right or defense of the State or its units officials or employees in an action in a court of the United States . . . including any defense that is available under the 11th Amendment"). And the Fourth Circuit has been equally clear—Maryland's waiver of sovereign immunity under the MTCA is not enough to waive immunity guaranteed by the Eleventh Amendment. *See Weller v. Dept. of Social Services for City of Baltimore*, 901 F.2d 387, 397–98 (4th Cir. 1990).

Plaintiffs do not dispute that the MTCA bars their tort claims against the State in federal court, but incorrectly argue that the MTCA constitutes a legislative waiver of sovereign immunity for claims under § 1983. *See* ECF No. 32 at 3–4.[3] Nor may Plaintiffs avoid the State's sovereign immunity by asking the Court to retain supplemental jurisdiction over these claims. *See* ECF No. 32 at 4 (citing 28 U.S.C. § 1367(d)). The Supreme Court has held that 28 U.S.C. § 1367 does not authorize district courts to exercise supplemental jurisdiction over claims against nonconsenting States. *Raygor v. Regents of the Univ. of Minnesota*, 534 U.S. 533, 541–42 (2002); *see also Pennhurst*, 465 U.S. at 121.

Furthermore, claims against State defendants acting in their official capacities are similarly barred by the Eleventh Amendment. *See Ballenger v. Owens*, 352 F.3d 842, 845 (4th Cir. 2003) ("[F]or purposes of the Eleventh Amendment, a state official acting in his official capacity is protected from a damages action by the same immunity [as the State].)"; *see also Brandon v. Holt*, 469 U.S. 464, 471–72 (1985) ("a judgment against a public servant 'in his

[3] Pin cites to documents filed on the Court's electronic filing system (CM/ECF) refer to the page numbers generated by that system.

official capacity' imposes liability on the entity that he represents") (citation omitted). Therefore, all claims against the State of Maryland, Secretary Moyer, the remaining State defendants in their official capacities, and Count III in its entirety, must be dismissed.

B. Maryland Tort Claims

1. Claims against Drs. Moore and Bonieskie (Count I)

Pursuant to the Maryland Health Care Malpractice Claims Act ("HCMCA"), Plaintiffs must first file a claim with the Maryland Health Care Alternative Dispute Resolution Office ("HCADRO") and waive arbitration prior to bringing a claim for "medical injury" against health care providers in State or Federal court. *See* Md. Code, Cts. & Jud. Proc. § 3-2A-02(a)(1); § 3-2A-04; *see also Zander v. United States*, 843 F. Supp. 2d 598, 605 (D. Md. 2012) (plaintiffs filing medical malpractice suits in federal district court must comply with HCMCA's preconditions just as they would when filing suit in Maryland state court). Count I alleges that Drs. Moore and Bonieskie were negligent in "failing to provide adequate medical treatment and/or mental health services," ECF No. 1 ¶ 51, and is therefore a claim for medical injury. *See* § 3-2A-01(g) (defining medical injury as an "injury arising or resulting from the rendering or failure to render health care"); *see also Manzano v. Southern Maryland Hosp., Inc.*, 698 A.2d 531, 535 (Md. 1997) (noting that the HCMCA imposes a mandatory requirement that medical negligence cases be submitted to arbitration). Because Plaintiffs have not filed a claim with HCADRO, Count I must be dismissed.[4]

2. Claims against Correctional Officers (Counts II, IV, V)

Because the State and Secretary Moyer are immune from suit, the remaining counts may only be raised against the Correctional Officers in their individual capacities. However, under the

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[4] While Plaintiffs argue that HCMCA requirements are not applicable to their § 1983 claim against the doctors, Plaintiffs do not dispute that these requirements bar their negligence claim.

MTCA, State personnel are immune "from liability in tort for a tortious act or omission that is within the scope of the public duties of the State personnel and is made without malice or gross negligence." *See* Md. Code, Cts. & Jud. Proc. § 5-522(b) (2006); *see also Lee v. Cline*, 863 A.2d 297, 310 (Md. 2004) (holding that MTCA immunity also encompasses Maryland constitutional torts and intentional torts). Malice under the MTCA is "conduct characterized by evil or wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill will or fraud." *Shoemaker v. Smith*, 725 A.2d 549, 559–60 (Md. 1999) (internal citations omitted). Gross negligence is "an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them." *Beall v. Holloway-Johnson*, 130 A.3d 406, 415 (Md. 2016).

While the line between negligence and gross negligence is not easily discernable, *id.*, Plaintiffs' Complaint fails to even allege that the Correctional Officers crossed that line. Nowhere in the Complaint do Plaintiffs suggest that the Correctional Officers took any knowing or willful actions against Mr. Leysath or even mention the words "malice" or "gross negligence." Plaintiffs, in opposition to Defendants' Motion, argue that the Correctional Officers' decision to put Leysath back into the cell with the exposed radiator constituted gross negligence, ECF No. 32 at 6. However, Plaintiffs' Complaint fails to make any distinction between this decision and every other allegedly negligent act undertaken by the Correctional Officers. Further, Plaintiffs cannot amend deficiencies in their Complaint with arguments made in their brief. *See Southern Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBank at Broadlands, LLC*, 713 F.3d 175, 184 (4th Cir. 2013) ("It is well-established that parties cannot amend their complaints through briefing or oral advocacy."). Because Plaintiffs remaining tort claims are brought as claims of negligence, Counts II, IV, and V must also be dismissed.[5]

C. Eighth Amendment Claims[6]

Plaintiffs allege that Defendants failed to respond to Leysath's delirious behavior and provide adequate care and thus violated the Eight Amendment's prohibition on cruel and unusual punishment. ECF No. 1 ¶¶ 122, 144. The Eighth Amendment's prohibition on cruel and unusual punishment "imposes certain basic duties on prison officials." *Raynor v. Pugh*, 817 F.3d 123, 127 (4th Cir. 2016) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)). Those duties include providing adequate medical care and reasonable measures to guarantee an inmate's safety. *Id.* In considering an Eighth Amendment claim, the Court employs both an objective and subjective inquiry. *Id.* First, the Court must determine whether Defendants subjected the inmate to "a serious deprivation of his rights in the form of a serious or significant physical or emotional injury." *Id.* (citing *Danswer v. Stansberry*, 772 F.3d 340, 346–47 (4th Cir. 2014)). Leysath's injuries led to his death, and there is no dispute that he suffered a serious or significant physical injury. *See* ECF No. 30-1 at 18.

Second, the Court must determine whether Defendants displayed a deliberate indifference to Leysath's health and safety, which must be established through evidence that Defendants had "actual knowledge of an excessive risk to the plaintiff's safety." *Raynor*, 817 F.3d at 128 (citing *Danser*, 772 F.3d at 347). To establish actual knowledge, Defendants must "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [they] must also draw the inference." *Raynor*, 817 F.3d at 128 (citing *Farmer*, 511 U.S. at 837). Alternatively, actual knowledge may be established through circumstantial evidence if "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.* And while Defendants are absolved from liability under the Eighth Amendment if their response to Leysath's condition was reasonable, *see Raynor*, 817 F.3d at 128 (citing *Farmer*, 511 U.S. at 844), the inverse is not necessarily true—negligent, stupid, or lazy conduct alone does not establish an Eighth Amendment violation. *See Rich v. Bruce*, 129 F.3d 336, 340 (4th Cir. 1997) (holding that a defendant having actual knowledge of facts from which a *reasonable person* might have inferred the existence of a substantial and unique risk to an inmate was insufficient to establish an Eighth Amendment violation).

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[5] While Counts IV and V are not labeled as such, they are also brought under the theory of negligence. *See* ECF No 1 ¶¶ 95, 105. Furthermore, because the Court finds that the MTCA bars negligence claims against all individual defendants, the Court need not consider Defendants' public official immunity argument made on behalf of the Correctional Officers. ECF No. 30-1 at 27.

[6] As the Court will rely on materials outside of Plaintiffs' Complaint, Defendants' Motion is construed as one for summary judgment for Counts VI and VII. While the parties dispute whether Defendants acted with deliberate indifference, Plaintiffs do not dispute any of the underlying facts. Nor have Plaintiffs indicated that Defendants' motion for summary judgment prior to the start of discovery is premature. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (noting that a party can invoke Federal Rule of Civil Procedure 56(d) if facts essential to its opposition are not available to it)).

1. Claim Against Drs. Moore and Bonieskie (Count VI)

Plaintiffs argue that Drs. Moore and Bonieskie were deliberately indifferent to Leysath's agitated mental state by failing to provide adequate mental health services, develop a comprehensive plan of treatment and care, monitor Leysath's behavior, and ensure that Leysath was confined in a safe environment. ECF No. 1 ¶ 119. While Drs. Moore and Bonieskie were aware that Leysath would be placed in a close observation cell that included a wall radiator, ECF No. 30-6 ¶ 5, the record provides no facts to suggest that Drs. Moore and Bonieskie were aware that the radiator cover had been removed. Nor does the record suggest that their decision to place Leysath under close observation was unreasonable. But even if a reasonable physician would have taken a more drastic response, such as immediately medicating Leysath, or personally observing Leysath throughout his time under close observation, "[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle v. Gamble*.

429 U.S. 97, 106 (1976). Drs. Moore and Bonieskie were not deliberately indifferent and cannot be held liable for any constitutional violations.

2. Claim Against Correctional Officers (Count VII)

Finally, Plaintiffs allege that the Correctional Officers acted with deliberate indifference to Leysath's agitated mental state by returning him in his close observation cell with exposed steam pipes and failing to promptly provide medical care and remove him from the cell once the pipes were broken. ECF No. 1 ¶ 138. As discussed, the Court may not find that the Correctional Officers were deliberately indifferent to Leysath's agitated mental state simply because their actions were unreasonable or negligent. As the Fourth Circuit has explained:

> In *Farmer*, the Supreme Court noted that officials "may be found free from liability if they responded reasonably" to a perceived risk. 511 U.S. at 844. This observation, of course, must be true because if the official's response was reasonable—*i.e.*, not negligent—then *a fortiori* he was not deliberately indifferent. It does not follow, however, that when an officer's response is unreasonable—*i.e.*, negligent—that he is liable for deliberate indifference. Indeed, we have noted that an officer's response to a perceived risk must be more than merely negligent or simply unreasonable. *See Brown*, 240 F.3d at 390–91 ("At most, [the officer's] failure to take additional precautions was negligent [*i.e.*, unreasonable under the circumstances], and not deliberately indifferent."). If a negligent response were sufficient to show deliberate indifference, the Supreme Court's explicit decision in *Farmer* to incorporate the subjective recklessness standard of culpability from the criminal law would be effectively negated.

See Parrish ex rel. Lee v. Cleveland, 372 F.3d 294, 306–07 (4th Cir. 2004).

Under this "subjective recklessness" standard, the Correctional Officers must have had both knowledge of the general risk of injury and knowledge that their conduct was inappropriate in light of that risk. *See Rick*, 129 F.3d at 339 n.2 (4th Cir. 1997). Clearly the Correctional Officers (less Officer Jaff and Sergeant Fekoya) could have found a safer alternative than leaving Leysath alone with an exposed steam pipe, and their decision to do so may not have been reasonable. These Officers were aware of Leysath's at-risk mental state as made clear by housing him under close observation and removing the detached radiator cover from his cell to mitigate the risk posed by the cover itself. However, the record does not suggest that the Officers knew that leaving Leysath alone with an exposed steam pipe was inappropriate in light of the risk he posed to himself. The Officers were not aware of any prior incidents of an inmate sustaining an injury from an exposed steam pipe and did not perceive the exposed pipes to present an unreasonable risk given that Leysath would be closely monitored. *See, e.g.*, ECF No. 30-13 ¶¶ 4, 5 (Affidavit of Major Harris); ECF No. 30-7 (Inmate Observation Aide Manual indicating that inmate aides "shall have a constant, direct line of sight with the inmate being observed for the entire duration of their shift").

Indeed, inmate observation aides monitored Leysath and recorded their checks every 15 to 30 minutes throughout his time in close observation, ECF No. 30-10, and the record does not indicate that the Correctional Officers or inmates were aware of Leysath's attempts to damage the steam pipes until after he had broken them. *See* ECF No. 30-18 (inmate observation aide statement indicating that inmate informed officer of Leysath's condition *after* steam pipe was broken). The Correctional Officers' failure to prevent Leysath from harming himself, without recognizing that the exposed steam pipes posed a specific risk to his safety, does not rise to the level of deliberate indifference. *See Brown v. Harris*, 240 F.3d 383, 390–91 (4th Cir. 2001) (holding that prison official's decision to place suicidal inmate on "medical watch" but failing to place inmate in paper gown or order medical examination was not deliberate indifference in light of inmate's subsequent suicide). While Plaintiffs assert that the Correctional Officers *should* have recognized this risk, they fail to offer any additional circumstantial evidence to suggest that an exposed steam pipe was a known danger to an unstable inmate who was being closely monitored. *See Makdessi v. Fields*, 789 F.3d 126, 133 (4th Cir. 2015) (known dangers are the kinds of issues that are "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past"). Nor was this risk so blatantly obviously that the Correctional Officers' failure to recognize it would justify an inference of actual knowledge. *See Parrish*, 372 F.3d at 305 (4th Cir. 2004).

Furthermore, the record does not suggest that Sergeant Fekoya's delay in retrieving Leysath from his cell was an act of deliberate indifference. The Court notes that the record, including video surveillance footage, ECF No. 30-15, leaves open questions as to what exactly transpired between the time Leysath broke the steam pipes and the time Sergeant Fekoya and Officer Jaff retrieved him from the cell. The record does not contain an affidavit from Officer Jaff describing when he heard the pipe break. Nor does the record explain what Sergeant Fekoya observed between the time he arrived at Leysath's cell and the point in which he peered through the feed tray and found him unresponsive.

Sergeant Fekoya responded to Leysath's cell immediately upon hearing the pipe break. Sergeant Fekoya did not initially enter the cell, but he did not simply ignore the threat; he informed his supervisors and waited for further guidance. *See* ECF No. 30-17. While the details missing from the record could be probative in determining whether Sergeant Fekoya's ten minute delay in retrieving Leysath was a reasonable response to the emergency, as the record stands, there is not a genuine issue of material fact as to deliberate indifference. As such, the

Court finds that the Correctional Officers were not deliberately indifferent to Leysath's mental condition in violation of the Eighth Amendment.[7]

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, ECF No. 30, shall be granted. A separate Order follows.

Dated: March 6, 2018

GEORGE J. HAZEL
United States District Judge

[7] Because the Court will grant summary judgment in favor of the Defendants on Counts VI and VII, the Court need not determine whether the Correctional Officers are shielded from liability on the basis of qualified immunity. *See Brockington v. Boykins*, 637 F.3d 503 (4th Cir. 2011) (public official will receive immunity from § 1983 claim unless 1) the allegations, if true, substantiate a violation of a federal statutory or constitutional right and 2) the right violated was clearly established such that a reasonable person would have known his acts or omissions violated that right).